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**COMPETITION - THE STATE EXPERIENCE**

**VOLUME I**

**RESPONSES TO FCC 3/1/96 QUESTIONS**

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**The National Association of  
Regulatory Utility Commissioners**

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**Date: MARCH 8, 1996**

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On behalf of NARUC's member states, we have compiled various state responses to the questions informally forwarded by the Common Carrier Bureau March 1 regarding local competition policies in the States. NARUC appreciates the opportunity to provide this information to the Federal Communications Commission and to facilitate federal and state coordinated implementation of the Telecommunications Act of 1996.

We look forward to the meeting on Tuesday, March 12 between state staff and the Common Carrier Bureau to discuss the various state approaches to interconnection, access and unbundling.

We would also expect that these and other States will submit comments for the record in the related proceedings. Thank you for your interest in these matters. Please feel free to contact us if you have additional questions.

**Sincerely,**

**Brad Ramsey  
Debra M. Kriste  
Lee Beatty Palagyi**

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**Arkansas**

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**1. Certification Requirements and Removal of Barriers to Entry (Section 253).**

Two competitive access providers (American Communications Services, Inc. and Brooks Fiber) have been certificated to provide intrastate special access and private line services. However, the Arkansas PSC has not yet taken any generic or specific action regarding local exchange service competition.

**2. Interconnection and Collocation (§§ 251(a)(1), (c)(2), & (c)(6)).**

In 1994, the PSC directed Southwestern Bell Telephone, GTE, and ALLTEL to provide physical collocation, where technically feasible. That Order is currently under appeal.

**3(a). Unbundled Access (§§ 251(c)(3), 252(d)(1)).** PSC has not yet addressed this issue.

**3(b). Pricing of Unbundled Access (§§ 251(c)(3) & 252(d)(1)).** PSC has not yet addressed this issue.

**3(c). Rates, Terms, and Conditions (§§ 251(c)(2)(d) & 252(d)(1)).** PSC has not yet addressed this issue.

**4. Mutual Compensation (Reciprocal Compensation) (§§ 251(b)(5) & 252(d)(2)).** PSC has not yet addressed this issue.

**5. Resale (§§ 251(b)(1) & 252(d)(3)).** PSC has not yet addressed this issue.

**6. Number Portability (§§ 251(b)(2) & 251(e)).** PSC has not yet addressed this issue.

**7. Dialing Parity (Section 251(b)(3)).** PSC has not yet addressed this issue.

**8. Universal Service (Section 254).**

Pursuant to Ark. Code Ann. §23-17-301 *et seq.*, Arkansas' Universal Telephone Service Fund is supported by an assessment upon all jurisdictional interexchange carriers. This statute is current under review by the Arkansas legislature to determine its compliance with the federal act. In the interim, this Commission has been directed by a joint House and Senate Interim Committee to suspend any pending regulatory proceedings regarding telecommunications issues related to competition and universal service until the findings of the interim committees are issued.

**9. Geographic Averaging (Section 254(g)).**

Currently, local exchange carriers and interexchange carriers are prohibited by Commission policy from charging "deaveraged" rates for intrastate MTS calls.

**California\***

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\* See Volume II for the Text of Orders referenced in this response.

**1. Certification Requirements and Removal of Barriers to Entry (Section 253). Please describe your certification requirements for newly entering providers of facilities-based and resale local exchange service. What actions have been taken to remove barriers to entry? What, if any, barriers remain?**

In December, the CPUC opened the two largest local exchange carrier's (LECs), Pacific Bell (Pacific) and GTE California, Inc. (GTEC), markets to facilities-based competitors. In February, the CPUC authorized competitors to resell these companies' services. In March, the CPUC will determine appropriate wholesale rates and which services must be made available for resale consistent with federal legislation. Competitors must meet minimum criteria that establish technical and managerial competence of the competitors. There are financial standards that must be met. The only barrier that will remain after March, will be the prohibition against entering small and mid-size markets. For a full description of entry and certification requirements see D.95-07-054, D.95-12-057 and D.96-02-072 which are attached.

The CPUC has certificated 35 facilities-based competitors, four of which have tariffs on file, and two of which have interconnection agreements with Pacific. The CPUC believes that most competitors will start offering services when resale is authorized.

**2. Interconnection and Collocation (§§ 251(a)(1), (c)(2), & (c)(6)). What rules govern the rates, terms, conditions, and points of interconnection between incumbent local exchange carriers and competitive providers? At what "technically feasible" points are incumbent local exchange carriers required to provide interconnection? What are your policies on physical and virtual collocation for intrastate service?**

The CPUC has adopted a bill and keep policy for all local calls between competitors and LECs. This policy will be reevaluated at the end of this year. In attempt to move away from adopting specific rules, the CPUC has adopted "preferred outcomes" that parties are encouraged to adopt as they develop mutually agreeable interconnection agreements. Parties are allowed to develop outcomes that differ from the preferred outcomes, but only agreements with preferred outcomes will receive expedited review and approval. All interconnection agreements are reviewed to ensure that the agreement is neither anti-competitive or nondiscriminatory. There is a streamlined dispute resolution process that parties unable to reach agreement or who have a dispute about an agreement may use. Please see CPUC decision 95-12-057 which is attached. The CPUC has allowed Pacific and GTEC to offer collocation. The rate structure mirrors the current FCC structure and LECs may offer virtual or physical collocation. The attached decisions, D.95-04-073 and D.95-12-016, provide more details.

**3(a). Unbundled Access (Section 251(c)(3), 252(d)(1)). What rules (or standards for approving privately negotiated contracts) govern the unbundling of incumbent local exchange carriers' network elements, such as local loops, switching, transport, operator services such as 411 and 911, and databases and signalling? What related rules facilitate competitive use of such unbundled elements? Has the Commission determined that any network elements are not required to be offered on an unbundled basis? If so, which elements? Do you require access to any network elements that are proprietary? How would having access to such proprietary elements harm the incumbent? How would not having such elements harm the new entrant?**

Many of the CPUC's policies governing access to unbundled elements will be determined after cost studies on the elements are approved in the CPUC's Open Access and Network Architecture Development (OANAD). In December 1995 and February 1996, the CPUC opened many of the LECs databases and signalling systems to use by competitors. Some elements are provisioned under tariff such as 911 and signalling system, other elements will be available by negotiating contracts with LECs. Appendix E of D.95-12-057 contains the rules that govern access to unbundled elements as have been adopted. Further rules will be issued in 1996.

Currently our OANAD proceeding will be examining rules for unbundling key elements of the incumbent local exchange carrier's network. Also our Local Competition proceeding is evaluating rules governing access to certain LEC services such as 411, 911 and databases.

The CPUC's pricing phase of OANAD will set prices for competitive, or unbundled elements once costs for such elements have been determined. The CPUC's OANAD order on cost methodology has adopted standards for developing costs for these elements, and in so doing has adopted Total Service Long Run Incremental Costs (TSLRIC) as the method for costing these elements.

To date the CPUC has not determined that all network elements need to be unbundled. The CPUC will however be evaluating which network elements to unbundle in the pricing phase of its OANAD proceeding.

The issue of proprietary network elements will be heard in the pricing phase of the CPUC's OANAD order and, as such, definitive access to proprietary network elements has yet to be addressed.

**Question 3(b). Pricing of Unbundled Access (§§ 251(c)(3) and 252(d)(1)). What rules or standards govern the pricing of unbundled network elements (loops, switching, transport, signalling, etc.)? In particular, please describe (1) whether prices are required to reflect forward-looking costs (cost of the element if purchased in the marketplace today) or historical (booked) costs; (2) whether and to what degree prices reflect allocations of common costs and how such costs are identified; (3) whether prices must reflect costs associated with public policy programs, such as universal service or geographic rate averaging; (4) what degree of pricing flexibility, if any, is extended to providers of unbundled network elements; and (5) whether prices can reflect discount plans (such as volume and term plans).**

The CPUC has not yet received testimony nor held hearings on the determination of prices. However, the CPUC has issued a decision which orders that costs shall be forward-looking. The CPUC also ordered that the TSLRIC (Total Service Long Run Incremental Cost) of a service exclude shared and common costs. The CPUC has scheduled hearings for Spring 1996. Among the issues to be addressed at these hearings are:

- Shared and common costs as well as the identification and allocation of those costs.
- What degree of pricing flexibility will be extended to providers of unbundled network elements..
- Whether discount prices can reflect discount plans. .

The costs of many public policy programs, such as the Universal Lifeline Telephone Service, the Deaf and Disabled Telecommunications Service (relay service and supplemental equipment distribution) and the California High Cost Fund, are funded through surcharges on the bills of all end users. To some extent universal service goals are currently being pursued through rate averaging. Relatively high cost areas within a local exchange carrier's territory are supported through rate averaging. The CPUC is in the process of replacing this internal subsidy with an external subsidy. (See response to question 8 for further discussion.)

**3(c). Rates, Terms, and Conditions (§§ 251(c)(2)(d) and 252(d)(1)). Please describe any interconnection rates or tariffs you have established. Also, please describe how these rates or tariffs were established and the ratemaking principles on which rates or tariffs are based. (See item 3(b) above). Please identify any terms and conditions that you have established with regard to interconnection.**

As noted in the answer to item 3(b) above, the CPUC has not adopted interconnection tariffs for interconnections between LECs and new entrants. The CPUC has an overall policy that carriers should compensate each other costs associated with interconnection. Policies and rules were developed based on written comments. For a more detailed description of the rules adopted please see the answer in 3(b) above.

**4. Mutual Compensation (Reciprocal Compensation) (§§ 251(h)(5) and 252(d)(2)). Please describe the compensation arrangements you have established for transport and traffic termination. Are there different interim and long-run rules? In what circumstances is bill-and-keep used? Do different rates apply to end office termination and tandem termination?**

The CPUC has adopted for 1996 a bill-and-keep policy for all local calls originated and terminated between incumbent LECs and new entrants. The policy will be reviewed and modified, if necessary, before January 1, 1997. There is no additional charge for calls terminated at a tandem. Parties are allowed to negotiate differing compensation arrangements if they choose.

**5. Resale (§§ 251(b)(1) & (c)(4) and 252(d)(3)). Please describe the terms and conditions on which resale of local exchange is required and/or permitted. What are the differences between the rates for retail and wholesale service? Also, please describe the ratemaking principles on which such wholesale rates are based (see item 3(b) above).**

The CPUC will determine in March which services will be resold and at the appropriate wholesale rate. In a proposed decision, the wholesale rates were developed by removing avoided retailing costs on a company wide basis. This resulted in a discount factor for wholesale services that was applied to most retail services. The proposed decision did not apply the discount to residential access lines and ISDN, both of which are asserted to be offered at retail rates currently below costs. The only restriction was that flat residential access lines could not be resold to business customers.

**6. Number Portability (§§ 251(b)(2) and 252(d)(3)). Please state the long-term number portability solution you have adopted and when you expect it to be "technically feasible" Please state any interim measure you are using. Have you address the issue of cost recovery regarding both interim measures and long-term solution. If so, please describe the cost recovery mechanisms you have develop.**

The CPUC has not adopted a long-term number portability solution. An industry task force has put forth two proposals for consideration by the CPUC. Those two proposals are AT&T Local Routing Number proposal and Pacific Bell's Release to Pivot proposal. The CPUC is scheduled to resolve this issue in the Fall 1996. The CPUC has issued a Proposed Decision on interim number portability. In that decision, Remote Call Forwarding and Direct Inward Dialing were proposed as interim measure proposed. Costing for these proposed measures was set at Direct Embedded Cost. Adoption of these interim measures is expected in Spring 1996.

**7. Dialing Parity (§§ 251(b)(3)). Please state how you are dealing with the question of intrastate dialing parity. Please discuss any measures that have been implemented or discussed for providing telephone exchange and toll service providers with nondiscriminatory access to telephone number, operator services, directory assistance, and directory listing.**



In Decision 96-02-072, the CPUC adopted policies to provide nondiscriminatory access to operator services, directory assistance and directory listings comparably to other providers including toll providers. Directory listings and operator services rules are still being developed by the CPUC.

The status of intrastate dialing parity (referred to as intraLATA presubscription and intraLATA equal access) in California is that no decision has yet been made. The last steps were that parties have filed comments and reply comments as directed by an Administrative Law Judge's Ruling. The comments and reply comments were filed in July and August of 1995, respectively.

**8. Universal Service (§§ 254). What state rules, either currently in place or forthcoming, refocus intrastate universal service policies to redirect implicit subsidies towards explicit, competitively neutral subsidies in reaction to competitive entry in incumbent LEC markets?**

In July of 1996 the CPUC proposed rules (D.95-07-050) that would replace implicit subsidies for residential basic service with explicit, geographically deaveraged subsidies for high cost areas. These subsidies will be funded in a competitively neutral manner either through a charge on carriers revenues or end user bills. The proposed subsidy would be available to all providers, both small and large LECs, as well as incumbents and new carriers. (The CPUC currently funds its Deaf and Disabled Telecommunications Program, Universal Lifeline Telephone Service, California High Cost Fund through separate all end user surcharges on consumer's bills. The California High Cost Fund is available only to small, incumbent LECs.) The CPUC is scheduled to make a final vote on this procedure in the Summer of 1996.

**10. Geographic Averaging (§ 254(g)). To what extent are providers of intrastate interexchange service and other services (such as local exchange service) permitted or required to charge different rates in different geographic areas? Do any such rate differences reflect cost differences, or "value of service" differences?**

Geographically averaged message toll rates have been a long standing policy of the CPUC for interexchange and local carriers. California Public Utilities Code requires any utility to offer service at nondiscriminatory rates. The CPUC has required LECs to charge service area-wide rates for all services, so these carriers cannot geographically deaverage rates. In an Administrative Law judge proposed decision allowing resale competition, LECs are allowed to geographically deaverage rates for local business services customers upon completion of TSLRIC cost studies in the OANAD proceeding. The question of geographically deaveraging for local residential rates will be addressed in the Universal Service proceeding in the summer of 1996.

## Colorado

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Colorado submitted a series of documents in answer to the questions.

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#### RULES REGULATING THE AUTHORITY TO OFFER LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES

**BASIS, PURPOSE AND STATUTORY AUTHORITY.** The basis and purpose of these rules is to establish regulations regarding the process for obtaining a certificate of public convenience and necessity ("CPCN") to provide local exchange telecommunications services. These rules are clear and simple and can be understood by persons expected to comply with them. They do not conflict with any other provision of law, and there are no duplicating or overlapping rules. These rules are issued pursuant to §§ 40-2-108 and 40-15-503(2), C.R.S.

**RULE 1. APPLICABILITY.** These rules are applicable to all telecommunications service providers who are seeking to offer local exchange telecommunications services. These rules are not applicable to applications to offer only services identified in §§ 40-15-301(2) and 40-15-305(2), C.R.S.

**RULE 2. DEFINITIONS.** The meaning of terms used in these rules shall be consistent with their general usage in the telecommunications industry unless specifically defined by Colorado statute or this rule. In addition to the definitions in this section, the statutory definitions apply. In the event the general usage of terms in the telecommunications industry or the definitions in this rule conflict with the statutory definitions, the statutory definitions control. As used in these rules, unless the context indicates otherwise, the following definitions apply:

3 **Applicant.** Any person filing an application with the Commission pursuant to these rules.

3.1 **Application.** A formal filing with the Commission which requests a certificate to provide local exchange telecommunications services, or an operating authority in a rural area served by a basic local exchange provider who only serves rural exchanges of 10,000 or fewer access lines, or both a certificate to provide local exchange telecommunications services and an operating authority.

3.2 **Certificate to provide local exchange telecommunications services or certificate.** Commission-granted authority to offer local exchange telecommunications services in the state of Colorado; the first of two prerequisites to obtaining a certificate of public convenience and necessity.

3.3 **Commission.** The Public Utilities Commission of the state of Colorado.

3.4 **Controlled telecommunications service.** The electronic, optical, or any other means of transmission of information between separate points by prearranged means that is subject to the jurisdiction of a governmental entity which regulates telecommunications, including federal, state, and local jurisdictions within the United States and all jurisdictions outside the United States.

3.5 Form tariff, form price list, or price list. A document which contains all the terms and conditions for all local exchange telecommunications products and services to be offered by the applicant.

3.6 Local calling area. Geographic area approved by the Commission as a community of interest in which customers may make calls without payment of a toll charge. The local calling area may include exchange areas in addition to the service exchange area. See rule 2.30, Rules Regulating Telecommunications Service Providers and Telephone Utilities, 4 CCR 723-2.

3.7 Local exchange telecommunications service. Basic local exchange service and such other services identified in § 40-15-201, C.R.S., or defined by the Commission pursuant to § 40-15-502(2), C.R.S.; regulated advanced features, premium services, and switched access as defined in § 40-15-301(2)(a), (b), and (c), C.R.S.; or any of the above singly or in combination.

3.8 Operating area. Specific geographic area in which a provider of local exchange telecommunications services is authorized by the Commission to exercise the rights and privileges granted pursuant to a certificate of public convenience and necessity.

3.9 Operating authority. Commission-granted authority to offer local exchange telecommunications services within an operating area; the second and last prerequisite to obtaining a certificate of public convenience and necessity.

3.10 Provider of local exchange telecommunications services or provider. Any person who holds a certificate of public convenience and necessity to provide local exchange telecommunications services.

**RULE 3. CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY.** When the Commission, by decision, has granted to a person both a certificate to provide local exchange telecommunications services and an operating authority within a specific operating area or areas, that person has received a certificate of public convenience and necessity to provide the local exchange telecommunications services specifically identified and approved by the Commission, subject to such terms and conditions as the Commission may establish in the Commission's decision or decisions.

**RULE 4. APPLICATION FOR CERTIFICATE TO PROVIDE LOCAL EXCHANGE**

**TELECOMMUNICATIONS SERVICES - CONTENTS OF APPLICATION.** To obtain a certificate to provide local exchange telecommunications services, the applicant must file an application with the Commission.

5 Contents of application. The application shall contain, in the following order and specifically identified, the following information, either in the application or in appropriately identified, attached exhibits:

5.0.1 Applicant's name and complete address (street, city, state, and zip code), and the name under which the operation is, or shall be, conducted in Colorado;

5.0.2 If applicant is a corporation: the state in which it is incorporated; the location of its principal office, if any, in Colorado; the names of its directors, officers, and Colorado agent for service of process; and a copy of its articles of incorporation or charter;

5.0.3 If applicant is an out-of-state corporation: a copy of the authority qualifying it to do business in Colorado;

5.0.4 If applicant is a partnership, a limited liability corporation, or any form of business organization other than a corporation: the names and addresses of all principal owners and managers and the date of creation of the business entity;

5.0.5 The name, title, address and telephone number of applicant's representative to which all inquiries should be made, including the title and telephone number for each representative responsible for responding to consumer complaint inquiries by either the public or the Commission;

5.0.6 A detailed description of applicant's affiliation, if any, with any other company and a detailed description of any Colorado certificate or operating authority, or both, held by the applicant or any person affiliated with the applicant;

5.0.7 A copy of the most recent audited balance sheet, income statement and statement of retained earnings, and,

5.0.7.1 If applicable, the most recent Securities and Exchange Commission Form 10-K and stockholder report(s) available for a period ending not earlier than twelve months before the date of the filing of the application;

5.0.7.2 If the audited balance sheet, income statement, and statement of retained earnings are for a period ending earlier than six months before the date of the filing of the application, a copy of the most recent unaudited balance sheet, income statement, and statement of retained earnings available for a period ending not earlier than six months before the date of the filing of the application;

5.0.7.3 For a newly-created company, a list of the source(s) of capital funds and the balance sheet and income statement of any affiliate providing capital funds;

5.0.8 A statement that, if a hearing is held by the Commission, applicant will present evidence to show that the applicant possesses the requisite managerial qualifications, financial resources, and technical competence to provide local exchange telecommunications services;

5.0.9 A brief history of applicant's, or any of its affiliates', local exchange telecommunications operations and the prior telecommunications service operations experience of each person identified in rules 4.1.2, 4.1.4, and 4.1.5, as applicable;

5.0.10 A statement of the facts (not in the form of conclusory statements) relied upon by the applicant to show that a grant of a certificate to applicant is consistent with the statements of public policy contained in §§ 40-15-101, 40-15-501, and 40-15-502, C.R.S.;

5.0.11 A statement identifying any decision entered by any court or any regulatory body within the last five years regarding the applicant's provision of local exchange telecommunications services or other controlled telecommunications services that resulted in: (a) assessment of civil penalties; (b) assessment of criminal penalties; (c) injunctive relief; (d) corrective action; (e) refund in excess of \$100 in any individual case or refund awarded to a class or classes of customers where the total refund is greater than or equal to \$250; (f) reparations; (g) initiation of a show cause; (h) initiation of a disciplinary action, including but not limited to, proceedings to limit or to place restrictions on any authority to operate, a certificate of public convenience and necessity, or any service offered; (i) refusal to grant authority to operate or to provide a service; (j) decertification or revocation of authority to operate or to provide a service; or (k) any combination of the foregoing. The statement shall identify the jurisdiction and provide the docket or file number for each action. Applicant shall provide a copy of any identified decision to the Commission upon request;

5.0.11.1 If the applicant has not provided a controlled telecommunications service within the United States continuously for the five years immediately preceding the filing date of the application, but has provided a controlled telecommunications service outside the United States at any time during the five years immediately preceding the filing date of the application, the applicant shall provide the information required by rule 4.1.11 for the controlled telecommunications service provided outside the United States. The statement shall identify the jurisdiction and provide the docket or file number for each action. Applicant shall provide a copy of any identified decision to the Commission upon request;

5.0.12 A statement describing the geographic area for which applicant seeks certification, e.g., statewide or a smaller geographic area. If certification for a specific geographic area, rather than statewide certification, is sought, the application shall contain a description of such geographic area by metes and bounds and a map displaying the service area;

5.0.13 A statement that the applicant, or its successors, will contribute, in a manner prescribed by statute and the Commission, to the funding of the Colorado High Cost Fund;

5.0.14 A statement that the applicant will pay, in a manner prescribed by statute and the Commission, into the funding of the Commission;

5.0.15 A statement that the applicant will contribute, in a manner prescribed by statute and the Commission, to the funding of emergency telephone access;

5.0.16 A statement that the applicant will contribute, in a manner prescribed by statute and the Commission, to the funding of Colorado Disabled Telephone Users Fund;

5.0.17 A statement that, if required to do so, the applicant will contribute, in a manner and to the extent prescribed by statute and the Commission, to the funding of any other financial support mechanism created by §§ 40-15-502(4) and (5), C.R.S., and adopted by the Commission, as required by § 40-15-503(2)(b)(V) C.R.S.;

5.0.18 A statement in which the applicant identifies an accounting system to be used for regulated telecommunications services which is either (a) the Uniform System of Accounts ("USOA") or (b) Generally Accepted Accounting Principles ("GAAP"); and a statement that the applicant will use the identified system unless the Commission orders otherwise. If the applicant is directed to use GAAP, applicant shall submit a copy of the existing chart of accounts or the proposed chart of accounts to be used;

5.0.19 A statement indicating whether the applicant will seek to draw from the Colorado High Cost Fund or from the universal service fund, and if so, a statement that the applicant will make separate, appropriate filings, as directed by the Commission;

5.0.20 A statement indicating, if the application is assigned for hearing by the Commission, the town or city where the applicant prefers the hearing to be held and any alternative choices;

5.0.21 A statement that the applicant understands that the filing of the application does not, by itself, constitute authority to operate; and a statement that the applicant shall provide no service unless and until the Commission has issued a decision granting applicant a certificate of public convenience and necessity, subject to any conditions or requirements stated in such decision and order;

5.0.22 A statement that, if a certificate is granted, applicant understands that such certificate is conditional upon (a) the obtaining of operating authority; (b) the existence of applicable effective tariffs or price lists for relevant services; and (c) compliance with applicable Commission rules and any conditions established by Commission order;

5.0.23 A statement that the applicant understands that if the contents of the application are found to be false or to contain misrepresentations, any certificate granted may be, upon Commission order, null and void;

5.0.24 A statement that the applicant agrees, first, to answer all questions propounded by the Commission or any authorized member of its staff concerning the application, the subject matter of the application, or any information supplied in support of the application and, second, to permit the Commission or any authorized member of its staff to inspect the applicant's books and records as part of the investigation into the application, the subject matter of the application, or any information supplied in support of the application; and [QUESTIONS: (1) SHOULD THIS BE MOVED HIGHER IN THE RULE TO GIVE IT MORE PROMINENCE? (2) WHAT ABOUT CONFIDENTIALITY OF THE INFORMATION? SHOULD THE RULE OR THE DECISION DISCUSS CONFIDENTIALITY, ESPECIALLY SINCE SOME APPLICANTS MAY BE COMPLETELY UNFAMILIAR WITH THE COMMISSION'S PROCEDURES RE OBTAINING CONFIDENTIAL TREATMENT? (3) SHOULD THERE BE SOMETHING IN RULES 4, 6, AND 7 CONCERNING CONFIDENTIALITY?]

5.0.25 An affidavit signed by an officer, a partner, an owner, or an employee, as appropriate, who is authorized to act on behalf of the applicant, stating that the contents of the application are true, accurate, and correct

5.1 Provider of last resort. If the applicant seeks to be designated as a provider of last resort, it must supplement its application by providing the information required by rules relating to universal service and the Colorado High Cost Fund.

#### **RULE 5. PROCESSING OF APPLICATIONS.**

6 The Commission will process applications in accordance with the Rules of Practice and Procedure found at 4 CCR 723-1. The authority sought to be obtained by application shall not be in effect until the Commission issues an order approving such authority, with or without hearing.

6.1 The Commission shall use the procedures set forth in 4 CCR 723-1, rule 70, to determine the completeness of an application.

6.2 Absent unusual or extraordinary circumstances, the Commission may reject an application that does not meet the requirements of 4 CCR 723-1, rule 70, and close the docket pertaining to that application.

#### **RULE 6. NOTICE OF INTENTION TO EXERCISE OPERATING AUTHORITY - CONTENTS OF NOTICE.**

Prior to offering local exchange telecommunications services in any area, except areas identified in rule 7, a provider who has already received a certificate pursuant to rules 4 and 5 must file with the Commission a notice of intention to exercise operating authority ("notice"). If a provider has not already received a certificate pursuant to rules 4 and 5, it may file a combined application in accordance with the provisions of rule 10.

7 Contents of notice. The notice shall contain, in the following order and specifically identified, the following information, either in the notice or in appropriately identified, attached exhibits:

7.0.1 A description of the operating area in metes and bounds;

7.0.2 A map of the operating area;

7.0.3 A statement which describes the operating authority sought, including the proposed effective date for the operating authority. The proposed effective date shall be no earlier than 30 days from the date on which the notice is filed. Such statement shall also include:

7.0.3.1 A form tariff or price list that conforms to the requirements of the Commission's rules governing price regulation or governing relaxed regulatory treatment, as applicable. If an application for operating authority is combined with an application for price regulation or for relaxed regulatory treatment (see rule 10), the provider may substitute, for a form tariff, a form price list that conforms to the requirements of the Commission's rules governing price regulation or governing relaxed regulatory treatment, as applicable;

7.0.3.2 A description of the local calling areas to be offered;

7.0.3.3 A description of the facilities and equipment that will be used to provide services, including whether service will be offered on a facilities-based basis, a resale basis, or otherwise;

7.0.4 A description of the provider's existing operations and general service and operating area(s) in Colorado and in any other jurisdiction;

7.0.5 An affirmative statement that the provider, pursuant to its tariff or price list, will not unjustly discriminate among and between consumers in the provision of local exchange telecommunications services within its operating area;

7.0.6 A statement of the names of other entities known to be providing similar services in areas contiguous to the operating area identified in the notice;

7.0.7 If the notice of intention to exercise operating authority is filed more than six months after the filing of the application for certificate under rule 4, an update of the information required in rule 4.1.7 and rule 4.1.11;

7.0.8 If the provider is providing regulated telecommunication services in Colorado, a statement that the provider is in compliance with applicable Commission rules, including quality of service rules;

7.0.9 A statement indicating, if the notice is set for hearing by the Commission, the town or city where the provider prefers the hearing to be held and any alternative choices;

7.0.10 A statement that the provider understands that the filing of the notice does not, by itself, constitute authority to operate and that the provider will not provide service unless and until all Commission-ordered requirements are satisfied;

7.0.11 A statement that if an operating authority is granted, the provider understands that such operating authority is conditional upon the existence of applicable effective tariffs or price lists for relevant services and upon compliance with statute, applicable Commission rules, and any conditions established by Commission order;

7.0.12 A statement that the provider understands that if the contents of the notice are found to be false or to contain misrepresentations, any operating authority granted may be, upon Commission order, null and void; and

7.0.13 An affidavit signed by an officer, a partner, an owner, or an employee, as appropriate, who is authorized to act on behalf of the provider, stating that the contents of the notice are true, accurate, and correct

7.1 Notice set for hearing. During the period between the filing of the notice and its effective date, the Commission will review the submitted notice and supporting information and documentation. The Commission may issue a decision which suspends and sets for hearing any notice under the following conditions: (a) if a regulatory agency or court has found that the provider has failed to comply with any rule, regulation, settlement, or statute relating to the provisioning of controlled telecommunications service since the provider received its certificate or any existing operating authority, whichever is later; or (b) if the notice is incomplete.

7.1.1 If the notice is incomplete, the Commission or its staff will notify the provider, in writing and within ten days of the filing of the notice, of the incompleteness of, and the deficiencies in, the notice. The timeframes specified in this rule shall be suspended from the date of notification to the provider that the notice is incomplete and has deficiencies. The timeframes specified in this rule shall recommence only upon written notification to the provider by the Commission that the notice is complete and the deficiencies have been cured. If the deficiencies are not cured within 30 days of the original filing of the notice, the notice shall be rejected and the docket closed.

7.1.2 The procedural requirements of 4 CCR 723-1 and the time limits set for issuance of Commission decisions specified in § 40-6-109.5, C.R.S., shall govern hearings under this rule.

7.1.3 If the Commission sets a notice for hearing, the notice shall not become effective unless and until approved by the Commission.

7.2 Effective Date of Notice. Unless the Commission sets the notice for hearing or unless the notice contains deficiencies (see rule 6.2.1), the notice shall be effective either (a) upon decision of the Commission, which decision shall be rendered no more than 45 days after the notice is filed with the Commission, or (b) 45 days after it is served and filed with the Commission, unless the notice contains an effective date later than 45 days after it is filed and served, in which event the later date shall control.

7.3 Commission decision if no hearing. If the notice is not set for hearing, the Commission shall issue a decision granting the requested operating authority for the proposed operating area.

**RULE 7. APPLICATION FOR OPERATING AUTHORITY IN AN AREA SERVED BY A BASIC LOCAL EXCHANGE PROVIDER WHICH ONLY SERVES EXCHANGES OF 10,000 OR FEWER ACCESS LINES - CONTENTS OF APPLICATION.** Prior to offering local exchange telecommunications services in an area served by a basic local exchange provider who only serves exchanges of 10,000 or fewer access lines, an applicant must file with the Commission an application requesting operating authority.

8 Contents of application. The application shall contain, in the following order and specifically identified, the following information, either in the application or in appropriately identified, attached exhibits:

8.0.1 A description of the operating area in metes and bounds;

8.0.2 A map of the operating area;

8.0.3 A statement describing the operating authority sought. Such statement shall include:

8.0.3.1 A form tariff or price list that conforms to the requirements of the Commission's rules governing price regulation or governing relaxed regulatory treatment, as applicable. If the application for operating authority is combined with an application for price regulation or for relaxed regulatory treatment (see rule 10), the provider may substitute, for a form tariff, a form price list that conforms to the requirements of the Commission's rules governing price regulation or governing relaxed regulatory treatment, as applicable;

8.0.3.2 A description of the local calling areas to be offered;

8.0.3.3 A description of the facilities and equipment that will be used to provide services, including whether service will be offered on a facilities-based basis, a resale basis, or otherwise;

8.0.4 A description of the applicant's existing operations and general service and operating area(s) in Colorado and in any other jurisdiction;

8.0.5 An affirmative statement that the applicant, pursuant to its tariff or price list, will not unjustly discriminate among and between consumers in the provision of local exchange telecommunications services within its operating area;

8.0.6 A statement of the names of other entities known to be providing similar services in areas contiguous to the operating area identified in the application;

8.0.7 A statement of the facts (not in the form of conclusory statements) relied upon by the applicant to show that a grant of operating authority is consistent with the statements of public policy contained in §§ 40-15-101, 40-15-501, and 40-15-502, C.R.S., and furthers the goal of provision of universal basic local exchange service to all consumers in the state at fair, just, reasonable, and affordable rates;

8.0.8 If the applicant is providing regulated telecommunications services, a statement that the applicant is in compliance with all applicable Commission rules, including quality of service rules;

8.0.9 A statement indicating, if the application is assigned for hearing, the town or city where the applicant prefers the hearing to be held and any alternative choice;

8.0.10 A statement that the applicant understands that the filing of the application does not, by itself, constitute authority to operate and that the applicant will not provide service unless and until all Commission-ordered requirements are satisfied;

8.0.11 A statement that if an operating authority is granted, the applicant understands that such operating authority is conditional upon the existence of applicable effective tariffs or price lists for relevant services and upon compliance with statute, applicable Commission rules, and any conditions established by Commission order;

8.0.12 A statement that the applicant understands that if the contents of the application are found to be false or to contain misrepresentations, any operating authority granted may be, upon Commission order, null and void; and

8.0.13 An affidavit signed by an officer, a partner, an owner, or an employee, as appropriate, who is authorized to act on behalf of the applicant, stating that the contents of the application are true, accurate, and correct.

8.1 Service of application. A copy of the application shall be served contemporaneously by first class mail on all providers of local exchange telecommunications service providing service in the proposed operating area. At the time of filing the application, the applicant shall provide written verification of compliance with this rule.

8.2 Processing of application. An application for operating authority under this rule shall be processed pursuant to rule 5.

**RULE 8. DEPOSITS REGARDING INTERCONNECTION AND RESALE.** In resale and interconnection rules, other applicable Commission rules, or applicable tariff, the Commission may require or allow facilities-based providers of local exchange telecommunications services who resell regulated telecommunications services to require deposits from persons reselling its facilities or services. Further, the Commission may require the facilities-based providers of local exchange telecommunications services to assume the service obligation of the reseller under the terms, conditions, and rates of the facilities-based providers of local exchange telecommunications services, should the reseller be unable or unwilling to continue service provision. Such provisions may be specified in appropriate tariffs.

**RULE 9. SUSPENSION, RESTRICTION OR REVOCATION OF A CPCN OR OPERATING AUTHORITY.** In accordance with statute, the Commission may suspend, restrict, or revoke a certificate of public convenience and necessity, an operating authority, or a certificate to provide local exchange telecommunications services, or any combination of these, for reasons including, but not limited to, (a) violation of an applicable statute or rule; (b) violation of a Commission order or decision; or (c) failure of a provider to provide service to customers in its operating area within the following time after the grant of operating authority, unless the Commission orders otherwise: not more than three years if the entity is a reseller and not more than five years if the entity is a facilities-based carrier.

**RULE 10. COMBINED APPLICATIONS.** Applicants may file for a certificate to provide local exchange telecommunications services, for an operating authority, for a transfer of a certificate or operating authority, for price regulation, for a specific form of relaxed regulation, or for any combination of these, in a combined application. In a combined application, the applicant shall follow the application process and must provide all information required for each separate component of the combined application.

**RULE 11. WAIVER OR VARIANCE.** The Commission may permit a waiver or variance from these rules, if not contrary to law, for good cause shown if it finds that compliance is impossible, impracticable, or unreasonable.

#### **PROPOSED RULES ON INTERCONNECTION AND UNBUNDLING February 21, 1996**

**RULE 1. BASIS, PURPOSE, AND STATUTORY AUTHORITY.** The basis and purpose of these rules are to prescribe the provision of nondiscriminatory access to and interconnection with the facilities of the telecommunications providers' networks to any other telecommunications provider offering or seeking to offer telecommunications products or services to the public. These rules also provide for the unbundling of certain telecommunications providers' networks. These rules provide an environment that will actively promote the competitive nature of the telecommunications industry, increase the affordability of telecommunications services, encourage technological advancements, and expand customer choices in the marketplace. These rules are clear and simple. They can be understood by persons or entities expected to comply with them. They do not conflict with any other provision of law. There are no duplicating or overlapping rules. These rules are issued pursuant to §§ 40-15-501, *et. seq.* and 40-2-108, C.R.S.

**RULE 2. APPLICABILITY.** These rules are applicable to all certified telecommunications providers that provide telecommunications exchange service in the state of Colorado.

#### **RULE 3. DEFINITIONS.**

The meaning of terms used within these rules shall be consistent with their general usage in the telecommunications industry unless specifically defined by Colorado statute or this rule. As used in these rules, unless context indicates otherwise, the following definitions shall apply:

3.1 **Colocation (physical and virtual):** Physical colocation occurs when one telecommunications provider owns interconnection facilities physically located within another telecommunications provider's physical premises. Virtual colocation occurs when one telecommunications provider extends its facilities to a point of interconnection within a reasonably close proximity to, but not physically located within, another telecommunications provider's physical premises. In virtual colocation, the terminating provider owns or leases and maintains the equipment, but the originating provider may request the type of equipment to be used.

3.2 **Common transport link** means a communications path (1) used by multiple customers and (2) containing one or more circuits connecting two switching systems in a network.

3.3 **Customer** means a person, including a telecommunications provider, who purchases a telecommunications service from a telecommunications provider.

3.4 **Customer network interface** means the facilities on or near the customer's premises which allow the customer to interface with the network.

3.5 **Dedicated transport link** means a communications path (1) used by one customer and (2) containing one or more circuits connecting two switching systems in a network.

3.6 **Dial tone** means an audible tone sent from an automatic switching system to a customer to indicate that the network is ready to receive dial signals.

3.7 **End user** means a person, other than a telecommunication provider, who purchases a telecommunications service from a telecommunications provider.

3.8 **Essential facilities** are those network elements which a telecommunications provider is required to offer on an unbundled basis.



- 3.9 Exchange access means the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services.
- 3.10 Incumbent telecommunications provider means a telecommunications provider that on February 8, 1996, provided telephone exchange service in Colorado and either (a) on such date was a member of the exchange carrier association or (b) is a person or entity that became a successor or assign of a member described in clause (a). If a provider has held a Certificate of Public Convenience and Necessity to offer local exchange service in Colorado for three years, such provider shall be considered an incumbent unless the Commission determines that such designation is not in the public interest. A telecommunications provider may also be considered an incumbent telecommunication provider if: (a) such provider occupies a position in the market for telephone exchange service within an area that is comparable to the position occupied by a provider described above; (b) such provider has substantially replaced an incumbent telecommunication provider described above; or (c) the Commission determines that such designation is in the public interest.
- 3.11 Interconnection is the process of providing a seamless connecting link between competing networks for the completion of local traffic that originates in the network of one telecommunications provider and terminates in the network of another telecommunications provider.
- 3.12 Loop means the facilities which connect a customer network interface to a main distribution frame, or its equivalent.
- 3.13 Network element means a facility or equipment used in the provision of a telecommunications service. Such term also includes features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service which telecommunications providers are required to offer on an unbundled basis.
- 3.14 Operational support means a mechanism to facilitate the provision of local exchange services, including but not limited to the taking of service and repair orders, and the exchange of billing data and customer account data in a manner consistent with Federal and Colorado law, through the mutual exchange of information between telecommunications providers. This information may be exchanged in a variety of ways which may include, but are not limited to, electronic interfaces, technical interfaces, or access to databases.
- 3.15 Operator systems means systems that provide for live or mechanized operator functions that assist end users with call completion and directory assistance.
- 3.16 Originating provider means the telecommunications provider that serves the end user who originates a local call.
- 3.17 Rural telecommunications provider means a telecommunications provider which: (1) serves only rural exchanges of ten thousand or fewer access lines; (2) provides common carrier service to any local exchange carrier study area that does not include either (a) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or (b) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993; (3) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines; (4) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or (5) had less than 15 percent of its access lines in communities of more than 50,000 on February 8, 1996.
- 3.18 Service control point (SCP) means a node in the signaling network to which informational requests for service handling (for example, routing) are directed and processed. The SCP contains both the service logic and the customer specific information necessary to process individual requests.
- 3.19 Signal transfer point (STP) means a facility which provides the function of connecting signal links in order to transfer appropriate signals from and between the various elements of a signaling network.
- 3.20 Signaling links means transmission facilities in a signaling network which carry all out-of-band signaling traffic between the end office and signal transfer point, the tandem office and signal transfer point, the signal transfer point and service control point, and the signal transfer point and another signal transfer point.
- 3.21 Switch means a facility that provides the functionalities required to connect appropriate lines or trunks to a desired communications transmission path. These functionalities may include, but are not limited to: (1) recognizing service requests, (2) obtaining required call specific information, (3) data analysis, (4) route selection, (5) call completion or hand-off, (6) testing, (7) recording, and (8) signaling.
- 3.22 Tandem switch means a facility that provides the function of connecting trunks to trunks for the purpose of completing inter-switch calls.

3.23 Telecommunications means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

3.24 Telecommunications exchange service means service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge.

3.25 Telecommunications provider means any provider of telecommunications exchange services.

3.26 Telecommunications service means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

3.27 Terminating provider means the telecommunications provider that serves the end user who receives a local call.

3.28 Unbundling means the disaggregation of facilities and functions into multiple basic network products or services so they can be separately offered to other telecommunications providers.

#### **RULE 4. INTERCONNECTION.**

4.1 All telecommunications providers shall interconnect directly or indirectly with the facilities and equipment of other telecommunications providers.

4.2 All telecommunications providers shall provide dialing parity to competing providers of telephone exchange service and telephone toll service, and shall permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays.

4.3 Telecommunications providers shall provide for the interconnection with the facilities and equipment of any requesting telecommunications provider:

4.3.1 for the transmission and routing of telephone exchange service and exchange access;

4.3.2 at any technically feasible point within the provider's network;

4.3.3 that is at least equal in quality to that provided by the provider to itself or to any subsidiary, affiliate, or any other party to which the provider interconnects; and

4.3.4 (1) at rates, terms, and conditions that are just, reasonable, and nondiscriminatory; (2) in accordance with the rates, terms, and conditions established by the provider pursuant to contract, arbitration, or tariff; and (3) consistent with the Commission's Rules Prescribing Principles for Costing and Pricing of Regulated Services of Telecommunications Service Providers (4 CCR 723-30).

4.4 Colocation: A telecommunications provider shall provide, on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, for the physical colocation of equipment necessary for interconnection or access to unbundled network elements at telecommunications provider's premises. A telecommunications provider may provide virtual colocation if it demonstrates to the Commission that physical colocation is not practical for technical reasons or because of space limitations. If a telecommunications provider requests Commission approval for the provision of virtual colocation in lieu of physical colocation, such request shall be made on a case-by-case, location-by-location, floor-by-floor basis.

4.5 Each telecommunications provider shall be responsible for constructing and maintaining the facilities on its side of the point of interconnection unless the interconnecting providers agree to some other arrangement.

4.6 Each telecommunications provider shall construct and maintain its interconnection facilities in accordance with accepted telecommunications engineering standards and practices. Each terminating provider will make available to all originating providers all technical references to documents that provide the technical specifications of the terminating provider's interconnection interfaces. In no event shall a telecommunications provider construct or maintain its interconnection facilities under terms and conditions different from the terms and conditions the provider offers to itself, its affiliates, or another telecommunications provider.

4.7 The Commission's quality of service rules at 4 CCR 723-2 shall apply to the provision of interconnection facilities.

#### **RULE 5. COMPENSATION FOR TERMINATING LOCAL TRAFFIC.**

5.1 For purposes of this rule, local calls originate at the originating provider's customer network interface and terminate at the terminating provider's customer network interface.

5.2 Except as provided in Rule 5.8, a terminating provider may charge the originating provider a termination fee for all local calls which originate on the originating provider's network and terminate on the terminating provider's network.

5.3 The termination fee shall be based on the costs associated with each network element (1) on the terminating provider's side of the point of interconnection and (2) used by the terminating provider to terminate the call.

5.4 If the originating provider is (1) interconnected to the terminating provider through the purchase of one or more unbundled elements owned by the terminating provider or a third provider or (2) uses one or more unbundled elements owned by a the terminating provider or a third provider to originate the call:

5.4.1 The terminating provider shall charge the originating provider a termination fee in accordance with this rule, and

5.4.2 The provider of the unbundled elements shall charge the originating provider for the use of the unbundled elements.

5.5 If the terminating provider is (1) interconnected to the originating provider through the purchase of one or more unbundled elements owned by the originating provider or a third provider or (2) uses one or more unbundled elements owned by a third provider to terminate the call:

5.5.1 The terminating provider shall charge the originating provider a termination fee in accordance with this rule, and

5.5.2 The provider of the unbundled elements shall charge the terminating provider for the use of the unbundled elements.

5.6 The termination fee, subject to Commission approval, may reflect either (1) a usage-sensitive charge based on, for example, distance, duration, or time of day; (2) a flat charge based on, for example, capacity port charges reflecting either the trunk group size or the peak-use of interconnecting capacity; or (3) any combination thereof or alternative mechanism.

5.7 To the extent Extended Area Service (EAS) agreements in existence on the effective date of these rules, conflict with this rule, the agreements must be modified to conform with the provisions of this Rule 5.

5.8 Until either (1) three years after the effective date of these rules or (2) six months after the implementation of a number portability database as contemplated in Rule 5, 4 CCR 723-34 (Rules on Local Number Portability and Administration), which ever occurs first, a terminating provider shall recover its costs associated with terminating local traffic through the offsetting of its reciprocal obligations with the originating providers. During this period, terminating and originating providers shall waive mutual recovery.

5.8.1 The terminating provider's costs associated with the termination of local calls may be recovered, as approved by the Commission, in the rates the terminating provider charges for services provided to its customers.

5.8.2 If the terminating provider provides the originating provider with dial tone, the terminating provider may charge the originating provider with the use of unbundled local switching for the generation of dial tone when the terminating provider terminates calls from the originating provider on the terminating provider's network.

**RULE 6. OTHER INTERCOMPANY ARRANGEMENTS.**

6.1 Telecommunications providers shall deal with other telecommunications providers in a good faith and cooperative manner.

6.2 All telecommunications providers are obligated to serve their customers in accordance with the Commission's rules.

6.3 All telecommunications providers shall provide reasonable access to poles, ducts, conduits, and rights-of-way when feasible and when access is necessary for other telecommunications providers to provide service. Upon application by a telecommunications provider, the Commission shall determine any matters concerning reasonable access to poles, ducts, conduits, and rights-of-way upon which agreement cannot be reached, including but not limited to, matters regarding valuations, space, and capacity restraints, and compensation for access.

6.4 Telecommunications providers shall provide interconnecting telecommunications providers with both answer and disconnect supervision as well as all available call detail information necessary to enable proper customer billing.

6.5 Telecommunications providers shall be required to enter into mutual billing and collection agreements so that each telecommunications provider can accept other service provider telephone line number and other non-proprietary calling cards and can bill collect or third party calls to a number served by another provider.

6.6 Telecommunications providers shall offer the interoperability of non-optional operator services between networks including, but not limited to, the ability of operators on each network to perform such operator functions as completing collect calls, third party calls, busy line verification calls, and busy line interrupt.

6.7 Telecommunications providers shall develop mutually agreeable and reciprocal arrangements for the protection of their respective customer proprietary network information.

6.8 Telecommunications providers shall cooperate in developing and implementing procedures for repair service referrals so that trouble reports are directed to the correct provider or providers.

6.9 Each telecommunications provider shall offer, in a nondiscriminatory manner pursuant to contract or tariff, the necessary operational support to enable other certified telecommunications providers the opportunity to provide the their customers quality of service as is available to the telecommunications provider's customers, consistent with 4 CCR 723-2 (Rules Regulating Telecommunications Service Providers and Telephone Utilities). Such contracts or tariffs shall be approved by the Commission and available for review pursuant to Commission order.

6.10 Telecommunications providers shall make available access to non-proprietary, as determined by the Commission, signaling protocols used in the routing of local and interexchange traffic; including signaling protocols used in the query of call processing databases such as 800 Database Service, Alternate Billing Service (ABS), and Line Information Data Base (LIDB); and shall make available the signaling resources and information necessary for the routing of local and interexchange traffic.

6.11 Except to the extent required by the end user's service, telecommunications providers shall be prohibited from interfering in the transmission of signaling information between customers and other telecommunications providers in a way injurious to network integrity or resulting in fraud.

6.12 White Pages.

6.12.1 Each telecommunications provider certified before February 8, 1996 ("White Pages provider"), shall cause the customer information (i.e. name, address, and telephone number) of each customer within a local calling area served by the provider to be published in a "White Pages" telephone directory, regardless of whether the customer subscribes to the particular provider. Upon Commission approval, another telecommunications provider may assume the responsibilities identified in this rule in addition to or instead of the provider contemplated above.

6.12.2 Each "White Pages" provider shall cause each competing provider to receive one "White Pages" telephone directory for each access line the competing provider serves in the "White Pages" provider's operating area.

6.12.3 Each competing telecommunications provider shall, in turn, cause a "White Pages" telephone directory to be delivered to each of its customers (one directory per access line purchased).

6.12.4 Each competing telecommunications provider shall provide the information required to adequately include the competing provider's subscriber information (i.e. name, address, and telephone number) in the "White Pages" telephone directory published by the "White Pages" provider. This information will be provided in a mutually agreeable format.

6.12.5 Each "White Pages" provider shall offer premium listings in its "White Pages" telephone directory to competing telecommunications provider's subscribers.

6.12.6 Each "White Pages" provider shall provide competing telecommunications providers space in the customer guide pages of the "White Pages" telephone directory. Unless mutually agreed, such space shall be equivalent to the space the "White Pages" provider provides itself for notifying customer of how to reach the provider to (1) request service, (2) contact repair service, (3) dial directory assistance, (4) reach an account representative, (5) request buried cable local service, and (6) contact the special needs center for customers with disabilities.

6.12.7 All parties involved shall abide by the Commission's rules on privacy and the handling of customer proprietary network information.

**RULE 7. UNBUNDLING.**

7.1 Each incumbent telecommunications provider shall provide, to any requesting telecommunications provider for the provision of a telecommunications service, nondiscriminatory access to essential facilities. An incumbent telecommunications provider shall provide such unbundled essential facilities in a manner that allows requesting providers to combine such facilities in order to provide such telecommunications service.

7.2 The following network elements are essential facilities:

7.2.1 Loop;

7.2.2 Local Switching;

7.2.3 Common Transport Links;

7.2.4 Dedicated Transport Links;

7.2.5 Local and Toll Tandem Switching;

7.2.6 Operator Systems;

7.2.7 Signaling Links;

7.2.8 Signal Transfer Points; and

7.2.9 Access to each Service Control Point via Signal Transfer Points.

7.3 Notwithstanding Rule 7.1 and 7.2, incumbent telecommunications providers are not required to unbundle an element that the provider (1) does not offer customers as part of a bundled service or (2) exclusively offers the element as part of a bundled service through buying the element from another provider and reselling it.

7.4 A facilities-based telecommunications provider that provides the sole loop to a customer's premises shall offer that loop as an unbundled network element. For purposes of this rule, an alternate provider's loop need not be in actual use to be considered a second loop to a customer premises.

7.5 A detailed record of all requests for unbundling shall be maintained by the providers requesting such unbundling and filed quarterly with the Commission. This information shall contain the name of the requesting person, the date of the request, the specific type of unbundling requested, the provider's planned and actual response date, and the provider's response.

**RULE 8. PROCESS AND IMPUTATION.**

**8.1 Interconnection.**

8.1.1 Except as provided in Rule 10 below, on the first day after the effective date of these rules, each incumbent telecommunication provider shall file tariffs effective on thirty days notice with the Commission establishing rates, terms, and conditions for interconnection.

8.1.2 Within thirty days after receiving operating authority, each telecommunications provider certified after the effective date of these rules shall file tariffs effective on thirty days notice or, if applicable, price lists, with the Commission establishing rates, terms, and conditions for interconnection.

**8.2 Termination of Local Traffic.**

8.2.1 Except as provided in Rule 10 below, pursuant to Rule 5.8, each telecommunications provider shall, on the first day after the period identified in Rule 5.8 concludes, file tariffs effective on thirty days notice with the Commission establishing rates, terms, and conditions for the termination of local exchange traffic.

8.2.2 Within thirty days after receiving operating authority, each telecommunications provider certified after the period identified in Rule 5.8 concludes shall file tariffs effective on thirty days notice or, if applicable, price lists, with the Commission establishing rates, terms, and conditions for the termination of local exchange traffic.

**8.3 Unbundling.**

8.3.1 Except as provided in Rule 10 below, on the first day after the effective date of these rules, each incumbent telecommunication provider shall file tariffs effective on thirty days notice with the Commission establishing rates, terms, and conditions for the sale of unbundled network elements.

8.3.2 Within thirty days after receiving operating authority, each telecommunications provider certified after the effective date of these rules shall file tariffs effective on thirty days notice or, if applicable, price lists, with the Commission establishing rates, terms, and conditions for the sale of unbundled network elements.

**8.4 White Pages.**

8.4.1 Except as provided in Rule 10 below, each "White Pages" provider shall file "White Pages" telephone directory tariffs with the Commission within 30 days of a competing telecommunications provider receipt of operating authority within the provider's operating area. Such tariffs shall establish the rates, terms, and conditions for the transfer of customer information, the publication of "White Pages" telephone directories for the competing provider, the publication of customer guide information for the competing provider, and the publication of premium directory listings for the competing provider's customers.

8.4.2 When determining the just and reasonable rate the "White Pages" provider may charge a competing telecommunications provider, the Commission may consider, where applicable, the rate the "White Pages" provider pays where such provider does not directly publish its own "White Pages" telephone directory.

8.5 Tariffs. Each tariff filed pursuant to this Rule 8 shall be reviewed by the Commission on a case-by-case basis. The telecommunications provider filing the tariff shall have the burden of proving that any proposed rates, terms, or conditions are consistent with the following:

8.5.1 Rates shall be cost-based, just, and reasonable;

8.5.2 Rates, terms, and conditions shall be nondiscriminatory and competitively neutral;

8.5.3 Rates, terms, and conditions shall be established to promote a competitive telecommunications marketplace while protecting and maintaining the wide availability of high quality telecommunications service; and

8.5.4 Rates shall be designed such that products and services that have been specifically deregulated by statute, rule, or Commission order are not subsidized by products or services that are subject to regulation by the Commission.

**8.6 Imputation.**

8.6.1 As applicable, each telecommunications provider shall impute its rates for interconnection, the termination of local traffic, unbundled network elements, and "White Pages" directory listings into the rates of its own services in accordance with 4 CCR 723-30 (Rules Prescribing Principles for Costing and Pricing of Regulated Services of Telecommunications Service Providers).

8.6.2 With respect to imputation associated with the rates for unbundled network elements, notwithstanding 4 CCR 723-30, such imputation shall only be required to the extent the unbundled network element is a bottleneck monopoly input. The fact that an element is defined as an essential facility is neither conclusive evidence that it is or is not a bottleneck monopoly input.

**RULE 9. NEGOTIATION, MEDIATION, AND ARBITRATION.**

9.1 Nothing in Rule 8 shall be construed to limit a telecommunications provider's ability to reach a negotiated, mediated, or arbitrated agreement with respect to the rates, terms, and conditions associated with interconnection, the termination of local traffic, the purchase of an unbundled network element, or publication of a "White Pages" directory.

9.2 Nothing in Rule 8 shall be construed to limit a telecommunications provider's ability to expand or clarify the tariffed terms and conditions associated with interconnection, the termination of local traffic, the purchase of an unbundled network element, or publication of a "White Pages" directory through negotiation, mediation, or arbitration.

9.3 If an agreement between two or more providers is reached prior to a provider's obligation to file a tariff pursuant to Rule 8, such obligation shall be waived unless the agreement is rejected by the Commission.

9.3.1 The Commission shall reject an agreement only if (1) the agreement (or portion thereof) discriminates against a telecommunications provider not a party to the agreement or (2) the implementation of the agreement (or portion thereof) is not consistent with the public interest, convenience, and necessity; and

9.3.2 The Commission shall act to approve or reject the agreement within 90 days after submission.

9.4 If an agreement between two or more providers is reached while one of the providers has a tariff pending before the Commission, the Commission shall consider the agreement as a stipulation between the parties and:

9.4.1 reject such agreement only if (1) the agreement (or portion thereof) discriminates against a telecommunications provider not a party to the agreement or (2) the implementation of the agreement (or portion thereof) is not consistent with the public interest, convenience, and necessity; and

9.4.2 act to approve or reject the agreement within 90 days after submission.

9.5 If an agreement between two or more providers is reached after one of the providers has a tariff approved by the Commission, the Commission shall consider the agreement as an request to amend the tariff and:

9.5.1 reject such agreement only if (1) the agreement (or portion thereof) discriminates against a telecommunications provider not a party to the agreement or (2) the implementation of the agreement (or portion thereof) is not consistent with the public interest, convenience, and necessity; and

9.5.2 act to approve or reject the agreement within 90 days after submission.

9.6 Any party in the process of negotiating an agreement for interconnection, the termination of local traffic, the purchase of an unbundled network element, or publication of a "White Pages" directory may, at any point in the negotiation, ask the Commission to participate in the negotiation and mediate any differences arising in the course of the negotiation.

9.6.1 If the Commission grants such a request, the Commission shall issue an order which establishes the parameters for the Commission's involvement in the negotiation, indicates the obligations each party will have in the course of the mediation, and outlines the process the Commission shall follow as a mediator.

9.7 Any party in the process of negotiating an agreement for interconnection, the termination of local traffic, the purchase of an unbundled network element, or publication of a "White Pages" directory may, during the period from the 135th to 160th day (inclusive) after the date on which the request for negotiation was made, ask the Commission to participate in the negotiation and arbitrate any differences arising in the course of the negotiation.

9.7.1 If the Commission grants such a request, the Commission shall issue an order which establishes the parameters for the Commission's involvement in the negotiation, indicates the obligations each party will have in the course of the arbitration, and outlines the process the Commission shall follow as an arbitrator.

**RULE 10. EXEMPTION FOR RURAL TELECOMMUNICATIONS PROVIDERS.**

10.1 Rules 4, 5, 7, 8, and 9 shall not apply to rural telecommunications providers until (1) such company has received a bona fide request for interconnection, the termination of local traffic, the purchase of an unbundled network element, or publication of a "White Pages" directory and (2) such request is deemed by the Commission to be technically feasible and not unduly economically burdensome.

10.2 A telecommunications provider making such a bona fide request shall submit a notice of its request to this Commission.

10.2.1 The Commission shall conduct a hearing for the purpose of determining whether to terminate the rural telecommunications provider's exemption under 10.1.

10.2.2 The Commission shall determine within 120 days after it receives notice of the request that such termination of the exemption is technically feasible, is not unduly economically burdensome, and is consistent with the state and federal universal service requirements.

10.2.3 Upon termination of an exemption, the Commission shall establish an implementation schedule for compliance with the request.

10.3 A rural telecommunications provider with fewer than 2 percent of the nation's subscriber lines installed in the aggregate nationwide may file an application with the Commission for a suspension, modification, or of the application of a requirement or requirements of this Rule 10 to the telephone exchange service facilities specified in such application. The Commission shall grant such application to the extent that, for such duration as this Commission determines that such suspension or modification:

10.3.1 is necessary (1) to avoid a significant adverse economic impact on users of telecommunications services generally; (2) to avoid imposing a requirement that is unduly economically burdensome; or (3) to avoid imposing a requirement that is technically unfeasible; and

10.3.2 is consistent with the public interest, convenience, and necessity.

10.3.3 The Commission shall act upon such application filed pursuant to Rule 10.3 within 180 days after receiving this application. Pending such action, the Commission may suspend enforcement of the requirement or requirements to which the application applies with respect to the provider or providers filing such application.

**RULE 11. DISPUTE RESOLUTION.** At any time when a disagreement arises between providers regarding the provision of interconnection or unbundling under these rules, either party may file a complaint with the Commission.

**RULE 12. VARIANCE OR WAIVER.** The Commission may permit a variance or waiver from these rules, if not contrary to law, for good cause shown where compliance is impracticable, impossible, or unreasonable.

#### **RULES PRESCRIBING PRINCIPLES FOR COSTING AND PRICING OF REGULATED SERVICES OF TELECOMMUNICATIONS SERVICE PROVIDERS**

4 CCR 723-30

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#### **BASIS, PURPOSE, AND STATUTORY AUTHORITY**

The basis and purpose for these rules are to standardize the determination of costs for pricing of regulated services of telecommunications service providers in the State of Colorado. The Colorado Public Utilities Commission (Commission) is entrusted with the regulation of rates and charges of all products and services offered by telecommunications providers under its jurisdiction. In the regulation of those rates and charges, the Commission has the responsibility to ensure that the rates and charges are just and reasonable (See § 40-3-101, C.R.S.).

The advent of competition into many telecommunications markets and the deregulation of products and services by either state or federal authorities have greatly complicated the Commission's responsibility to determine whether rates and charges of telecommunications services regulated by the Commission are just and reasonable. These rules provide specific guidelines for all telecommunications providers in the area of appropriate market and cost analyses which underlie just and reasonable rates.

These rules do not conflict with any other provision of law, and there are no duplicating or overlapping rules. In particular, these rules are not intended to affect or modify existing rules found at 4 CCR 723-24 (Part 3 rules) and 723-27 (Cost Allocation Rules). In the event of any inconsistency between these Costing and Pricing Rules and the Part 3 Rules or the Cost Allocation Rules, the latter shall apply.

The statutory authority for these rules is §§ 40-2-108, 40-3-101, and 40-3-110, C.R.S.

#### **RULE 1: APPLICABILITY**

Rules 2 through 7 are applicable to all telecommunications service providers whose rates are regulated by the Commission. Rule 7 contains provisions for exceptions and waivers for specific providers or services.

#### **RULE 2: DEFINITIONS**

As used in these rules, unless the context otherwise requires:

- (1) **Average Cost Pricing:** A practice where a firm sets the price of a product equal to the average total cost of that product. Such a result can be achieved by adding a mark-up to the average variable cost of the product.
- (2) **Average Fixed Cost:** The sum of the relevant fixed costs of producing a given quantity of output, divided by the total number of units produced.
- (3) **Average Service Long-Run Incremental Cost:** Total service long-run incremental cost divided by the total number of units of the service.
- (4) **Average Total Cost:** The total cost of producing a given quantity of output, divided by the total number of units produced. Average total cost is equal to the sum of average variable cost and average fixed cost.
- (5) **Average Variable Cost:** The summation of all variable costs of producing a given quantity of output, divided by the total number of units produced.
- (6) **Bundling:** A situation in which the rate elements and tariff provisions for a service are aggregated so that customers may not buy some features and functions within the collection without buying them all.
- (7) **Cost Accounting Standards:** The assignment of costs to products, services, or customer classes using the following five criteria:
  - (a) **Cost Causation:** Costs are assigned to the revenue-producing products or services that cause those costs to be incurred;
  - (b) **Traceability:** Costs are assigned using the cost attribute that permits the resources represented by the costs to be identified in their entirety with a revenue-producing activity;
  - (c) **Variability:** Costs that vary in total with variations in some measure of the volume of activity that is associated with the revenue-producing product or service but that are not traceable to a revenue-producing product or service, are assigned to the revenue-producing product or service based upon the estimated rate of variability;
  - (d) **Capacity Required:** Costs of capacity are assigned according to whether they are necessary for the performance of the service; and
  - (e) **Beneficiality:** Costs are assigned to various services based upon the degree of benefit derived by each service.
- (8) **Direct Cost:** A cost specifically identifiable with the production of an individual service, without requiring the use of allocations to separate it from costs incurred in the production of other services.
- (9) **Economies of Scale:** Economies of scale exist if the average cost of producing any group of services increases less than proportionately to an increase in quantity of those services.
- (10) **Economies of Scope:** Economies of scope exist if the cost of producing any group of services by one firm is less than the sum of the costs of producing the same group and quantities of those services by two or more firms providing mutually exclusive subsets of those services.
- (11) **Elasticity of Demand:** The percentage change in the quantity demanded of a service, divided by the percentage change in the price of the service.
- (12) **Elasticity of Supply:** The percentage change in the quantity supplied of a service, divided by the percentage change in the price of the service.
- (13) **Fixed Cost:** A cost which is invariant with respect to the volume of output, within the specified planning horizon. Such a cost must be paid regardless of how many units the firm produces, or whether it produces at all, as long as the firm does not withdraw entirely from the relevant market.
- (14) **Fully Distributed Costs:** The costs derived from the process of assigning the total historical costs of the firm to individual products or services using cost accounting, engineering, and economic standards. Fully distributed costs include not only all justifiable costs related to the provision of service but also the return on investment.
- (15) **Functional Component:** A cost element or group of cost elements representing the smallest feasible level of unbundling capable of being tariffed and offered as a service.
- (16) **Historical Costs:** The investment or expenses incurred at the time an input or resource is purchased, which is not necessarily equal to the costs of replacing the input or resource in the current time. Historical costs are directly obtainable from accounting records of the provider.



(17) **Imputation:** In the instance where Part 2 or fully regulated Part 3 services are bundled with other services or where Part 2 or fully regulated Part 3 services are used as inputs by a provider to provide either a final or intermediate service, imputation is the practice whereby the tariff price of the Part 2 or fully regulated Part 3 service must be included in the price floor for the service in question.

(18) **Incremental Service Incremental Cost:** The change in total cost resulting from increasing (or decreasing) the quantity of output of a service by a small number of units, divided by that small number. If total cost changes in a continuous fashion as output changes and the increment is sufficiently small, incremental service incremental cost will approximate marginal cost.

(19) **Joint Cost:** A cost that occurs when the production process involves intermediate or final outputs that maintains fixed proportions with respect to two or more services.

(20) **Local Exchange Carrier or LEC:** A provider of Part 2, Title 40, Article 15, services that are regulated by the Commission.

(21) **Long-Run Costs:** The costs incurred by a firm operating in a planning horizon where all elements of the production process can be varied, including the size and type of facilities and other utilized resources.

(22) **Marginal Cost:** A theoretical change in total cost resulting from an extremely small change in output. In mathematical terms, marginal cost is the first derivative of the total cost function with respect to output.

(23) **Marginal Cost Pricing:** A theoretical practice in economics where a firm prices its competitive products at marginal cost of the last unit of output.

(24) **Market Power:** Any market power exerted by a firm in a market where the competitive process cannot produce the theoretical outcomes and benefits of perfect competition. The degree of market power is determined by a consideration of the following factors:

(a) Relevant market, which is determined by service and geographic substitutability on both the demand and supply sides of the market;

(b) The market share of the particular service held by the regulated telecommunications service provider in the relevant market;

(c) The supply responsiveness (or elasticity) of competitors in the relevant market, which is basically an assessment of entry and expansion conditions of competitors; and

(d) The market demand characteristics in the relevant market. For example, the more elastic the total market demand is, the more customers view other services as substitutes or alternatives for the provider's service in question.

(25) **Monopoly:** In its strictest sense of the term, a firm is a monopoly if it is the only supplier of services for which there are no substitutes but many buyers. The simple economic analysis of monopoly relaxes the assumption of no substitutes, but assumes that the monopolist faces a relatively stable and predictable downward-sloping market demand curve.

(26) **Natural Monopoly:** Natural monopoly exists if a single firm produces its set of outputs at less cost than could be achieved by dividing that set among two or more firms.

(27) **Overhead Costs:** Those shared costs related to the production of all services offered by a firm.

(28) **Perfect Competition:** A market structure is perfectly competitive when the following conditions hold:

(a) There are a large number of firms each with an insubstantial share of the market;

(b) The firms produce a homogeneous service using identical production processes and possess perfect information;

(c) There is free entry into and exit from the industry.

Perfect competition implies that both marginal revenue and average revenue are equal to price in long run equilibrium. Thus, firms are price takers and can sell as much as they are capable of producing at the prevailing price.

(29) **Price Ceiling:** A maximum level above which a regulated telecommunications service provider shall not price a service.

(30) **Price Discrimination:** The act of selling different units of a service at price differentials not directly corresponding to differences in cost. This includes both (1) the sale of identical units of the service to different customers at different prices, and, (2) the sale of identical units of the service to the same customer at different prices. In order for a firm to practice price discrimination profitably with respect to a particular service, it must have: (1) some control over the price it charges for that service; (2) the ability to segregate its customers for that service into groups with different price elasticities of demand; and (3) the ability to prevent resale of the service by those customers who can buy at the lower prices.

(31) **Price Floor:** A minimum level below which a provider shall not price a service.